IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 317 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHEMAJI S THAKOR

Versus

STATE OF GUJARAT

Appearance:

MR AM PAREKH for Petitioner

MR HH PATEL, APP, for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/01/2001

ORAL JUDGEMENT

#. Having heard the learned counsel for the parties and perusing the special criminal application, I am satisfied that this petition deserves acceptance.

#. The petitioner by this petition under Article 226 of

the Constitution challenges the order of the respondent No.2 dated 27-12-1999 externing him for the period of two years from the Districts of Mahesana, Patan, Sabarkantha, Banaskantha, Ahmedabad, Gandhinagar and Ahmedabad city. Challenge has also been made to the order of the respondent No.1 dated 2nd March,2000 rejecting the appeal filed by the petitioner against the order aforesaid of the respondent No.2.

#. Manifold contentions have been raised by the learned counsel for the petitioner challenging the impugned order but as this petition deserves to be allowed only on one ground, all those contentions need not to be referred, considered and decided.

#. Reply to the special criminal application has not been filed by the respondents and the factual averments made by the petitioner therein stand uncontroverted. This petition has been admitted on 26th April, 2000 and despite of this it has come up for hearing after more than six months of the admission thereof the respondents have not cared to file reply to the special civil application. Request made by the counsel for the respondents for grant of time to the respondents to file reply to the special civil application cannot be granted on these facts and circumstances.

#. It is contended that there is total lack of application of mind by the authority concerned in the present case. While giving notice and passing the order of externment of the petitioner from the districts Sabarkantha, Banaskantha and Ahmedabad city and Ahmedabad (Rural) no reason has been assigned. In support of this contention, learned counsel for the petitioner placed reliance on the decision of this Court in the case of Mustufamiya P. Saiyad vs. State of Gujarat reported in 1999 (1) GLH 913 and in the case of Dafer Ramzan Zafar vs.State of Gujarat reported in 1999 (1) GLH 425 and the decision given in the case of Bharwad Popatbhai Devabhai vs. State of Gujarat, special criminal application No.667/99 decided on 25-11-1999 (Coram: A.L. Dave,J). Carrying this contention further, learned counsel for the petitioner contended that there is delay of four months in passing of the order as well as the petitioner has not been heard in the matter.

#. Learned counsel for the respondents supported the order passed by the authorities.

#. In this case, I find that there is total nonapplication of mind of the authority concerned in

externing the petitioner from four districts. I find sufficient merits in the contention of the learned counsel for the petitioner that no reason has been given. It is not a case where the petitioner was operating in another four districts and a such there cannot be any reasonableness in the action of the respondent-externing authority to extern the petitioner from those four districts. This matter is squarely covered by the decision of this Court in the case of Bharwad Popatbhai Devabhai vs. State of Gujarat (supra). I also find merits in the contention of the learned counsel for the petitioner that there is delay of four months in passing of the externment order and this delay has not been explained.

#. In the result, this special criminal application succeeds and the same is allowed. The order of externment of the petitioner dated 27-12-1999 and the order dated 2-3-2000 passed by the respondent No.1 are quashed and set aside. Rule is made absolute. No order as to costs.

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zgs/-